IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 644 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THAKORE BHARATSINH CHHAGANJI
Versus
STATE OF GUJARAT AND ANOTHER

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Appearance :
MR BHARAT T RAO for the Petitioner
MR AJ DESAI, ADDITIONAL PUBLIC PROSECUTOR for Respondent No.1
MR DHARMESH V SHAH for Respondent No.2

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 05/10/2006

ORAL JUDGMENT

1. The petitioner is before this Court being aggrieved by order dated 30.07.2005 passed by the learned 3rd Additional Senior Civil Judge and Judicial Magistrate First Class, Mahesana below application Exh.7 in Criminal

Case No.11 of 2005.

Application Exh.7 was filed seeking discharge. The learned Judge after taking into consideration the rival submissions of the parties, the contents of the application, the oral and documentary evidence, came to a prima facie conclusion that at the stage of framing of charge, he has to see only, 'prima facie' case. The learned Judge has recorded that there is 'enough material' for framing of charge. The learned Judge is aware of the civil proceedings and has mentioned that the same is not required to be taken into consideration by the Court while deciding the criminal liability of a party.

2. Mr.Dharmesh V.Shah, learned advocate for the bank relied upon a decision of the Hon'ble the Apex Court in the matter is **STATE OF MAHARASHTRA VS. S.B.JOHARI**, reported in (2002) 2 SCC 57 and a decision in the matter of **STATE OF MAHARASHTRA VS. PRIYA SHARAN MAHARAJ**, reported in AIR 1997 SC 2041. The learned advocate submitted that the Hon'ble the Apex Court has held that, at the stage of framing of charge, 'the version of the complainant' is to be taken into consideration. The Hon'ble the Apex Court has held that, such version is not required to have an independent corroboration. What is required to be seen is whether there is sufficient material on record, so as to try the accused persons.

3. Mr.Shah, the learned advocate for the bank submitted that the bank had unfavourable circumstances, a custodian is appointed on 19.08.2002. On 31st December, out of 284 employees of the bank, 109 employees were retrenched. The bank was taken into liquidation on 11.07.2003. On 31.07.2003, 121 employees were retrenched and 54 employees of the bank were retrenched on 28.02.2005. Mr.Shah submitted that as on date, only 20 employees are continued in service of the bank **on contract basis** mainly for the purpose of lodging the claims before the DICGCI of the investors, who have deposited amount up to Rs.1 lac in Fixed Deposit. He submitted that it is in these circumstances that a decree was passed in favour of the bank by the Board of Nominees on 29.07.2002 that nothing further could be done except a notice for attachment on 10.04.2003. He submitted that during pendency of the present proceedings, an order of attachment is passed on 03.10.2006 by the Sale Officer of the Visnagar Nagrik Sahkari Bank Ltd., Visnagar (in liquidation).

4. Mr.A.J.Desai, learned Additional Public Prosecutor submitted that it is a settled law that at the time of considering the application for discharge, the Court is not suppose to record the final conclusions in the matter. It has to see only the prima facie evidence against the person concerned. He submitted that in the present case, there is sufficient material against the

accused and therefore, the learned Judge has rightly not discharged the present petitioner.

5. Taking into consideration the totality of the case, the Court finds no error committed by the learned Judge hence, the revision application fails and it is dismissed. Rule is discharged.

At this stage, Mr.B.T.Rao, learned advocate for the petitioner submitted that the interim order, 'stay of further proceedings', be continued for a period of six weeks.

Having found no substance in the revision application and having found no fault with the order rejecting the discharge application, the Court finds no substance in the request hence, it is rejected.

(RAVI R.TRIPATHI, J.)

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